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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,748	07/31/2003	Takeshi Tsubouchi	033528-006	9932

21839 7590 05/11/2005

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EXAMINER
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MENDOZA, MICHAEL G

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 05/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

### Office Action Summary

Application No.

10/630,748

<b>Applicant(s)</b>
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TSUBOUCHI, TAKESHI

Examiner

Michael G. Mendoza

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2005.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-12 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12 is/are allowed.
- 6) ☒ Claim(s) 1 and 3-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) .
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date .
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_ .
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_ .

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

### ***Response to Arguments***

2. Applicant's arguments, see pg 7, filed 13 April 2005, with respect to the rejection(s) of claim(s) 1-8 and 10-12 under 35 USC 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of .

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

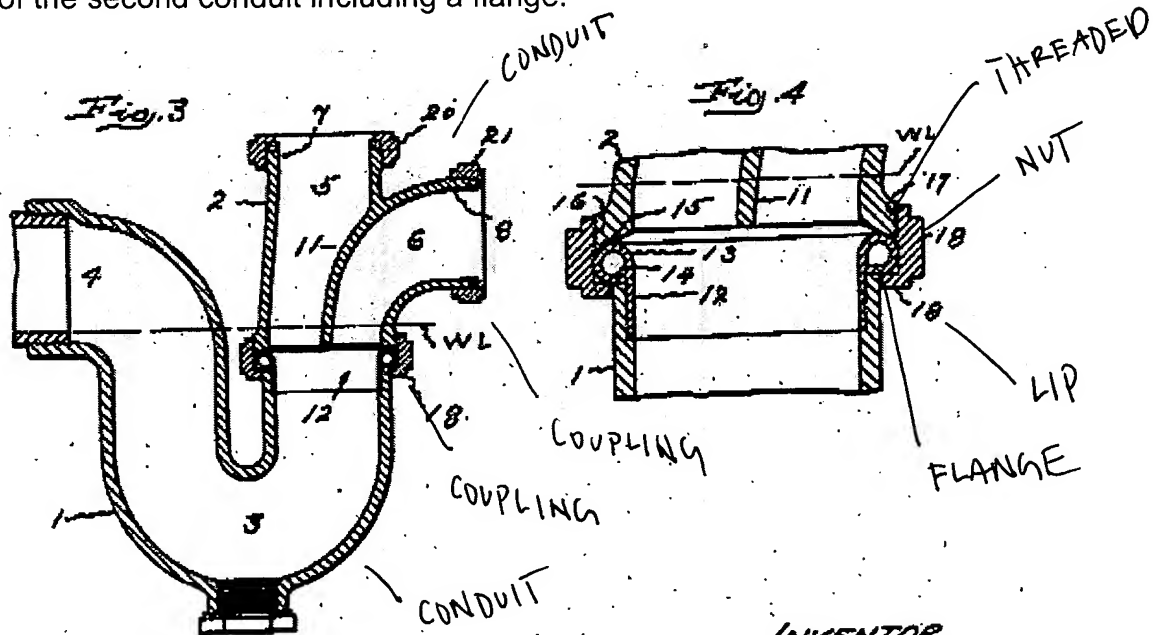
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3, and 5-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Little 2302617.
5. Little teaches a conduit assembly, the conduit assembly comprising: a conduit, the conduit including a first curved conduit and a second curved conduit; a first coupling, the first coupling being movable between a rotatable position (col. 2, lines 27-29) and a fixed position (col. 2, lines 34-37); and a second coupling for attaching, the second coupling being movable between a rotatable position (col. 2, lines 27-29) and a fixed position (col. 2, lines 34-37); wherein the first and second curved conduits are rigid;

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wherein the conduit is circular in cross-section; wherein the first coupling comprises a first rotatable nut, the first rotatable nut being movable between a rotatable position (col. 2, lines 27-29) and a fixed position (col. 2, lines 34-37); wherein the first rotatable nut engages a correspondingly threaded inflow port; wherein the second coupling comprises a second rotatable nut, the second rotatable nut being movable between a rotatable position (col. 2, lines 27-29) and a fixed position (col. 2, lines 34-37); wherein the second rotatable nut engages the second end of the first curved conduit, the second end of the first curved conduit being correspondingly threaded; wherein the second rotatable nut includes a lip for engaging the first end of the second curved conduit, the first end of the second conduit including a flange.



INVENTOR  
 Mitchell S. Little, Jr.  
 Harry R. Williams  
 atty.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims <sup>4</sup>~~6~~, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Little.

8. Little disclosed the claimed invention except for the use of titanium. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use titanium, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Also it is common knowledge to those of ordinary skill in the art to choose a material that has sufficient strength for the intended use of that material.

9. As to claims 10 and 11, the conduits taught by Little are fully capable of conducting blood there through.

***Allowable Subject Matter***

10. Claim 12 is allowable over the prior art of record.

11. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach or render obvious the overall claimed method for implanting a circulatory apparatus in a patient, the apparatus comprising a mechanical circulatory device and a conduit assembly for attachment to the mechanical

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circulatory device, the conduit assembly including a first rigid conduit and a second rigid conduit; the method comprising the steps of: attaching the first rigid conduit to the second rigid conduit with a second coupling in a rotatable position; positioning the mechanical circulatory device relative to the patient; rotating the second rigid conduit until a desired position of the second rigid conduit relative to the patient is achieved; and moving the second coupling to a fixed position so as to maintain a predetermined orientation of the second rigid conduit when the second coupling is disposed in the fixed position.

### ***Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-44963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

  
GLENN K. DAWSON  
PRIMARY EXAMINER

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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